



COURT MARTIAL

Citation: *R v Ziade*, 2011 CM 1015

Date: 20111207

Docket: 201158

Standing Court Martial

George Taylor Denison III Armoury
Toronto, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal N.A. Ziade, Offender

Before: Colonel M. Dutil, CMJ

REASONS FOR SENTENCE

(Orally)

[1] Master Corporal Ziade was originally charged with four offences. He has pleaded guilty to one count of conduct to the prejudice of good order and discipline under section 129 of the *National Defence Act*, which was laid in the alternative to an offence of disobedience of a lawful command by a superior officer under section 83 of the *Act*.

[2] The particulars of the charge allege that on 29 October 2010, at the Lieutenant-Colonel George Taylor Denison III Armoury, Toronto, Ontario, he did not remove his personal AR15 upper receiver from his issued C7A2 rifle when told to do so by Sergeant Kalk. The court accepted and recorded the plea accordingly and directed a stay of proceedings on the alternative charge. It's now incumbent upon me to determine what shall be an appropriate, fair, and just sentence.

[3] Counsel for prosecution and defence have made a joint submission on sentence. They recommend that Master Corporal Ziade be sentenced to a fine in the amount of

\$1500. Although the court is not bound by the joint submission, it is generally accepted that a joint submission ought to be rejected only if it is contrary to the public interest and if the sentence would bring the administration of justice into disrepute.

[4] In the context of sentencing an offender under the Code of Service Discipline, the court martial should guide itself with the appropriate sentencing purposes, principles, and objectives, including those enunciated in sections 718.1 and 718.2 of the *Criminal Code*.

[5] The fundamental purpose of sentencing at court martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishments that meet one or more of the following objectives:

- (a) the protection of the public, and that includes the interests of the Canadian Forces;
- (b) the denunciation of the unlawful conduct;
- (c) the deterrent effect of the punishment not only on the offender, but also upon others who might be tempted to commit such offences; and
- (d) the reformation and rehabilitation of the offender.

[6] The sentence must also take into consideration the following principles:

- (a) The sentence must be commensurate with the gravity of the offence, the previous character of the offender and his or her degree of responsibility;
- (b) The sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) The court must also respect the principle that an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances. In other words, punishments in the form of incarceration should only be used as a last resort;
- (d) Finally, the sentence should be increased or reduced to account for any relative aggravating or mitigating circumstances relating to the offence or the offender. However, the court must act with restraint in determining sentence in imposing such punishment or punishments that should be the minimum necessary intervention to maintain discipline.

[7] The facts surrounding this commission of the offence reveal that Master Corporal Ziade was a member and is a member of the Reserve Force since 1 January 2005. At the time of the offence he was a member of the Governor General's Horse Guards serving on Class B terms of service with the Canadian Forces Recruiting Centre in Toronto. From Friday, 29 October 2010 to 31 October 2010, he participated in a unit field

training exercise at Land Forces Central Area Training Centre, Meaford, Ontario. On Friday, 29 October 2010, before the departure for Meaford, the unit assembled at the unit armoury where the members drew their weapons from the arsenal and prepared for the departure. At approximately 1900 hours he was issued with a C7A2 rifle from the unit arsenal. Upon receiving that complete rifle, he removed the upper receiver of that weapon and returned it to Corporal Butterfield at the unit arsenal. Master Corporal Ziade then asked Corporal Butterfield if he could replace the issued upper receiver with his own, to which Corporal Butterfield said no, then said whatever, and took the issued upper receiver back.

[8] Shortly after, still in the Toronto armoury, Master Corporal Burgoyne, the Regimental Quartermaster sergeant, noticed that the rifle Master Corporal Ziade was carrying had a shorter barrel than the ones in possession of the unit. He inquired with him as to why it was the case. Master Corporal Ziade explained he had replaced the issued one with his own personal AR15 upper receiver, and that for him it was "no big deal" since the parts were compatible. The Regimental Quartermaster sergeant told Master Corporal Ziade that he could not substitute weapons parts, and that that was in violation of the policy. Master Corporal Burgoyne told Master Corporal Ziade to remove his upper receiver from the C7A2 rifle to which he said no. Sergeant Kalk arrived on the scene and Master Corporal Burgoyne explained to him the situation. Sergeant Kalk told Master Corporal Ziade to remove his personal upper receiver from his issued weapon, and Sergeant Kalk then carried on with his other tasks.

[9] The following day at Meaford, during the unit exercise, an officer noticed in the unit command post a rifle that appeared shorter than the other C7A2s. Quickly it was revealed that the rifle that had been issued to Master Corporal Ziade had an upper receiver that had been replaced by another AR15 upper receiver. On October 30, 2010, the rifle was seized by the military police, and with the result that the AR15 upper receiver belonging to the accused was returned to him on or about 25 November 2011; so roughly a little over a year.

[10] On 31 October 2010, Master Corporal Ziade was interviewed by military police and he cooperated with the investigation. The commanding officer of the unit received the military police report in November 2010, and in December 2010 the CO ordered a summary investigation into the matter. That investigation was completed in January 2011, a month after the CO ordered a disciplinary investigation into the matter. On 5 May 2011, the disciplinary investigation was completed and Master Corporal Ziade was charged on 28 July 2011. On 6 September 2011 the CO of the Governor General's Horse Guards applied for disposal of charges to commander LFCA, and on 29 September 2011 commander LFCA referred the charges to the Director of Military Prosecutions.

[11] During the sentencing hearing, the court was provided with abundant documentary evidence including the most recent personnel evaluation reports and personal development review for the offender. In addition, the court received recent performance and character letters as evidence. In a nutshell, Master Corporal Ziade is a good and

solid performer, who has demonstrated over the years, and after the commission of the offence; that is, post-offence conduct, that he is a strong asset for his unit, and a person who acts professionally, and who has acted professionally before and after the incident. His superiors indicate that he is trustworthy and reliable. The statement as to particulars of the accused, signed by his commanding officer, reveals that the incident was isolated and an error in judgement for a soldier who had been an intelligent, well motivated, and who had had a history of strong service with the Governor General's Horse Guards. He still now serves with the CFRC detachment in Toronto.

[12] The evidence also indicates that he continues today to produce value to the CFRC, the squadron and the regiment that he serves with, and that he is still held in high esteem as a junior leader.

[13] The aggravating factors in this case are the following:

- (a) Master Corporal Ziade was in a leadership role when he committed the offence. He knew that it was inappropriate to alter a CF weapon but decided to do so despite being told not to do so by a colleague and a superior. This conduct by a junior leader is a blatant disregard for basic military discipline, especially in the case of a person of his experience; and
- (b) the offence involved the misuse of CF weaponry even if the alteration was minor in nature.

[14] However, the mitigating factors include:

- (a) the plea of guilty to the charge at the earlier opportunity. The charge sheet was signed by the Director of Military Prosecutions on 2 November 2011 and, considering that this court is held on 7 December 2011, there is no doubt that this admission of guilt is a full acceptance of responsibility for the accused's conduct. And the fact that he has cooperated with the police at the first instance is also a sign of acceptance of responsibility and remorse in the circumstances;
- (b) the fact that it is clearly the result of an error in judgement and an isolated incident;
- (c) the absence of previous disciplinary or criminal record;
- (d) the delay since the commission of the offence and the fact that as a result of his misconduct he was deprived of his own property; that is, the upper receiver that belonged to his own AR15 receiver, approximately for one year; and finally,

- (e) the fact that he has cooperated with police during the investigation that I mentioned before, and that clearly right from the outset, he understood that he had done something that was totally inappropriate.

[15] In the circumstances, I must say that the court certainly agrees with counsel that the proposed sentence is the minimal sentence applicable in the circumstances. And also that it's not so off the mark that its adoption by this court would be contrary to the public interest or bring the administration of military justice into disrepute. The proposed sentence is sufficient to meet the objectives of denunciation, general and specific deterrence, and rehabilitation

FOR THESE REASONS, THE COURT

[16] **FINDS** you guilty of the fourth charge under section 129 of the *National Defence Act* for conduct to the prejudice of good order and discipline and confirms that the court directed a stay of proceedings for the alternate charge under section 83 of the *Act*, and

[17] **SENTENCES** you to a fine in the amount of \$1500.

Counsel:

Major E. Carrier, Canadian Military Prosecution Service
Counsel for Her Majesty, the Queen

Major S. Collins, Directorate of Defence Counsel Services
Counsel for Master Corporal Ziade